

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 DENNIS MICHAEL GIECK,
12 CDCR #K-76640,

13 Plaintiff,

14 vs.

15 WARDEN, R.J. DONOVAN, et al.,
16

17 Defendants.
18

Civil No. 08-1546 JAH (AJB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a)
AND/OR FAILING TO MOVE
TO PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Dennis Michael Gieck ("Plaintiff"), a state prisoner currently incarcerated at the R. J.
20 Donovan Correctional Facility located in San Diego, California, and proceeding pro se, has filed
21 a civil rights Complaint pursuant to 42 U.S.C. § 1983.

22 **I.**

23 **FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

24 All parties instituting any civil action, suit or proceeding in a district court of the United
25 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
26 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if
27 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).

28 ///

1 See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d
2 1176, 1177 (9th Cir. 1999).

3 Plaintiff has neither prepaid the \$350 filing fee required to commence a civil action, nor
4 has submitted a Motion to Proceed IFP. Therefore, this case is subject to immediate dismissal
5 pursuant to 28 U.S.C. § 1914(a).

6 **II.**

7 **CONCLUSION AND ORDER**

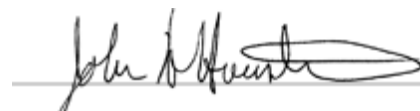
8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is “Filed”
12 to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed
13 IFP which includes a certified copy of his trust account statement for the 6-month period
14 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
15 3.2(b).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
17 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*
18 *Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
19 enclosed Motion to Proceed IFP within 45 days, this action shall remain dismissed without
20 prejudice and without further Order of the Court.

21
22 DATED: September 4, 2008

23 
24 HON. JOHN A. HOUSTON
United States District Judge